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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,082	07/25/2001	Mark R. Potter	1662-38800 JMH (P00-3561)	6486
23505	7590	03/07/2005	EXAMINER	
CONLEY ROSE, P.C. P. O. BOX 3267 HOUSTON, TX 77253-3267			DU, THUAN N	
			ART UNIT	PAPER NUMBER
			2116	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/915,082

Applicant(s)

POTTER ET AL.

Examiner

Thuan N. Du

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-42 are presented for examination.

#### ***Claim Objections***

2. Claim 12 is objected to because of the following informalities: claim 12 recites “each of ... computers report ...” should be -- “each of ... computers reports ...”. Appropriate correction is required.
3. Claim 42 is objected to because of the following informalities: a period (.) to end the claim is missing. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2-5, 9-29 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation “the Internet” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation “the amount of transactions” in line 2. There is insufficient antecedent basis for this limitation in the claim.

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Claim 4 recites the limitations “said state that consumes less power” and “the state” in line 1. There is insufficient antecedent basis for these limitations in the claim.

Claim 5 recites the limitations “said state that consumes less power” and “the state” in line 1. There is insufficient antecedent basis for these limitations in the claim.

Claim 9 recites the limitation “the power state” in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation “the rate of transactions” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the limitation “the state” in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation “the off state” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation “the frequency” in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitations “the performance” and “the specified power limit” in line 6. There is insufficient antecedent basis for these limitations in the claim.

Claim 26 recites the limitations “said management control console” in line 4, “the overall power usage” in line 5 and “the specified performance criterion” in line 6. There is insufficient antecedent basis for these limitations in the claim.

Claim 37 recites the limitation “the performance” in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 11-14, 17-19, 22-25 and 27-29 are also rejected for incorporating the above deficiency by dependency.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fung (U.S. Patent No. 6,859,882).

8. Regarding claims 1, 9, 14, 21-24, 26-29 and 35-42, Fung teaches a system, comprising:  
a plurality of computers (server nodes) [col. 6, lines 14-17, 47-51], each computer capable of being in one of a plurality of power states (Modes 1-4) [col. 34, line 53 to col. 35, line 47]; and

a load balancer (128) and power management logic (MM 108) coupled to said computers and to a network (132) [Fig. 6], wherein said load balancer and power management logic changes the power state of at least one of said plurality of computers based on the load of at least one of said plurality of computers [col. 8, lines 24-38; col. 11, lines 66-67; col. 12, lines 13-14].

Fung does not explicitly teach that the changing the power state of the computer(s) coupled to the network based on transactions on the network. However, Fung discloses that the power state (clock speed) of the computers could be adjusted based on demands by sensing the load for each of the computers [col. 8, lines 39-48]. One of ordinary skill in the art would have

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recognized that network transactions proportional to the assigned workload of the computer coupled to the network. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to recognize that Fung could also change the power state of at least one of said plurality of computers based on transaction on the network.

9. Regarding claim 2, Fung teaches that the network comprises Internet [Figs. 1 and 6].

10. Regarding claims 3, 10-13 and 15, Fung teaches that the management module determines when the amount of transactions on said network drops below a threshold and when this occurs changes the power state of at least one of said plurality of computers to a state that uses less electrical power [col. 31, lines 21-40].

11. Regarding claims 4, 16 and 17, Fung teaches that a state that consumes less power is a state in which the computer is off (Mode 4) [col. 35, lines 40-42].

12. Regarding claims 5 and 18-20, Fung teaches that a state that consumes less power is a state in which the computer is operational but with diminished capacity (Modes 2 and 3) [col. 34, lines 57-65; col. 35, lines 27-39].

13. Regarding claims 6 and 25, Fung teaches that the power state includes a state selected from the group consisting of fully operational (Mode 1), reduced power (Modes 2 and 3), and off (Mode 4) [col. 35, lines 63-65].

14. Regarding claim 7, Fung teaches that in the reduced power state, the computer is operational at diminished capacity (Modes 2 and 3) [col. 34, lines 57-65; col. 35, lines 27-39].

15. Regarding claim 8, Fung teaches that the load balancer provides transaction from the network to the computers [it is well known that the load balancer is used to provides workload to the computers].

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16. Regarding claims 30-34, since they recite method of operating of the apparatus defined in the apparatus claims, they are rejected accordingly based on the rejection of the apparatus claims.

***Conclusion***

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuan N. Du whose telephone number is (571) 272-3673. The examiner can normally be reached on Monday and Wednesday-Friday: 9:30 AM - 8:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (571) 272-3670.

Central TC telephone number is (571) 272-2100.

The fax number for the organization is (703) 872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



Thuan N. Du  
March 2, 2005